



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA073422016

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2017**

**Decision and Reasons
Promulgated
On 01 August 2017**

Before

Upper Tribunal Judge Southern

Between

**RZ
(Anonymity direction made)**
Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellant: Mr M. Moriarty, counsel instructed by Luqmani Thompson & Partners, solicitors

For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Iran, has been granted permission to appeal against the decision of First-tier Tribunal Blake who, by a determination promulgated on 27 February 2017, dismissed his appeal against a decision of the respondent, made on 6 July 2016, to refuse his application for asylum.

2. The parties are, of course, aware of the full detail of the claim advanced by the appellant and, for present purposes, the following summary will suffice. The appellant arrived in the United Kingdom in July 2012 and was admitted as a student with leave to remain until 30 January 2014. In Iran he had been a voluntary or regular member of the Basije but on occasion had refused to act as required because he did not approve of what he had been asked to do. Shortly before leaving Iran to come to the United Kingdom to study, the appellant was required by the Iranian authorities to sign an undertaking to provide them with his contact details in the United Kingdom and, if required to do so, to act as a “spy” or informant. It was not until 19 December 2013, a few weeks before his leave to remain was due to expire after which he had intended to return to Iran, that he was contacted by an unknown man who referred to the undertaking the appellant had signed and said that, in the absence of a functioning London Embassy, his help was now required.

3. The appellant said he did not wish to provide this service and so terminated the call. He received further such calls subsequently and, on 22 December 2013, heard from his father in Iran that the family home had been raided and the authorities said that the appellant was a traitor. His belongings, including a computer, were confiscated. For these reasons he feared that should he return to Iran he would be detained and be subjected to persecutory ill-treatment.

4. The respondent refused the claim because the account of these events was not considered to be credible. The judge dismissed the appeal because he agreed with the respondent that the account given by the appellant of the events he has described was not credible and the judge did not accept that account to be true.

5. A remarkable feature of the determination of the judge is that although he sets out a lengthy summary of the reasons given by the respondent for refusing the claim, between paragraphs 33 to 81 of his decision, he does not set out any summary, discussion or analysis of the evidence offered by the appellant in response to the decision letter. All we have is that, at paragraph 12, the judge said:

“The Appellant’s evidence and the oral submissions from both representatives are fully set out in the Record of Proceedings and have been taken into account by me.”

The difficulty with that is that, as the record of proceedings is not a document available to the reader of the determination, we have no idea what the judge understood the appellant's evidence to amount to and nor do we have any indication of the understanding of the judge of the challenges raised by the appellant to the reasoning of the respondent that led her to reject the claim. This was important because, as is observed in the grounds for seeking permission to appeal:

“As detailed in the Appellant's witness statement in support of this appeal and submitted in his skeleton argument, it was a central feature of his appeal that the credibility issues asserted in the SSHD's Reasons for Refusal Letter (“RFRL”) were largely based on misunderstandings and / or misinterpretations of his role within the Basije, the general nature of the training he received in Iran and his subsequent problems with the Iranian authorities.”

6. The grounds upon which permission to appeal was sought and granted may be summarised as follows. In challenging the rejection by the respondent of the credibility of his account, the appellant relied in particular upon an expert report prepared by Roya Kashef dated 22 January 2017. This lengthy report was said by the appellant to provide strong support for the credibility of his account of his experiences and his dealings with the authorities in Iran and their representative who contacted him in London. The report addressed and engaged with specific adverse credibility findings relied upon by the respondent, expressing the view that the appellant's account was not implausible or lacking in credibility. In particular, a key point taken against the appellant was that it was implausible that he would not be called upon to provide services as a spy or informant until shortly before he was due to leave the United Kingdom. The expert witness offers a contrary view, explaining:

“... Since President Rohani took office in August 2013, the number of executions- including public executions- had soared and regular demonstrations and protest marches were being organised in the UK and specifically London. There was increased activity outside the Iranian Embassy in London as well as demonstrations outside Downing Street. It is possible that in view of the Embassy being closed and reduced staff in the UK this was the time they wanted [RZ] to act as their eyes and ears as he was dutybound to do.”

7. Counsel for the appellant made specific reference to this, and other, sections of the report both in his skeleton argument and in his oral submissions, but there is no reference, at all, to the report anywhere in the determination. As the grounds accept, the judge was not bound to accept the view expressed by this expert witness but the appellant was entitled to see that this evidence had been taken into account and to understand why, if the judge did consider it, it was rejected.

8. The grounds complain also the judge fell into error in making no attempt to engage with other lines of argument advanced in submission made on the appellant's behalf, an example of which is that the term "spy" may be misleading, given what the appellant was actually saying about what had been required of him. There is no indication that the judge gave consideration to that submission. At paragraph 94 he observed only that he did not think that the appellant "would have presented as an attractive candidate as a spy, given his previous failures to comply with the request of the Basije".

9. Drawing all of this together, in my judgment this is sufficient to establish that it was an error of law for the judge not to have had regard, adequately or possibly at all, to the case actually being advanced before him on behalf of the appellant. As I do not know if he even had regard to the expert report or, if he did, what he made of it, I cannot be sure that if he had done so the outcome would necessarily have been the same. Therefore, the error of law is a material one which means that his decision to dismiss the appeal cannot stand. The appeal to the Upper Tribunal succeeds to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Summary of decision:

10. The determination of this appeal discloses a material error of law error of law and the decision of First-tier Tribunal Judge Blake is set aside.

11. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern

Date: 28 July 2017